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**SENATE BILL 1006**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Carlos R. Cisneros**

**AN ACT**

**RELATING TO PUBLIC UTILITIES; REQUIRING PUBLIC UTILITIES AND  
RURAL ELECTRIC COOPERATIVES TO MAKE NET METERING SERVICES  
AVAILABLE TO CUSTOMERS THAT OPERATE FACILITIES THAT PRODUCE  
ELECTRICAL ENERGY FROM RENEWABLE ENERGY RESOURCES; PROVIDING  
REQUIREMENTS FOR CHARGES AND CREDITS FOR NET METERING;  
PROVIDING REQUIREMENTS FOR SAFETY AND PERFORMANCE.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967,  
Chapter 96, Section 3, as amended) is amended to read:**

**"62-3-3. DEFINITIONS. -- Unless otherwise specified, when  
used in the Public Utility Act:**

**A. "affiliated interest" means a person who  
directly or indirectly, through one or more intermediaries,  
controls or is controlled by or is under common control with a**

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1 public utility. Control includes instances where a person is  
2 an officer, director, partner, trustee or person of similar  
3 status or function or owns directly or indirectly or has a  
4 beneficial interest in ten percent or more of any class of  
5 securities of a person;

6 B. "average operating margin" means the average of  
7 the operating margins of a rural electric cooperative over the  
8 past five years;

9 C. "clean generation source" means a facility that  
10 produces electrical energy:

11 (1) generated by the use of low- or zero-  
12 emissions generation technology with substantial long-term  
13 production potential;

14 (2) generated by the use of a renewable energy  
15 resource that may include a solar, wind, hydropower or  
16 geothermal resource or by the use of a biomass resource such as  
17 agriculture or animal waste, small diameter timber, salt cedar  
18 and other phreatophyte or woody vegetation removed from a river  
19 basin or watershed in New Mexico, landfill gas and  
20 anaerobically digested waste biomass or hydrogen produced from  
21 renewable sources used in fuel cells; and

22 (3) that is not generated by use of fossil  
23 fuel or nuclear energy;

24 ~~[B.]~~ D. "commission" means the public regulation  
25 commi ssi on;

. 155184. 3

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1                   ~~[E.]~~ E. "commissioner" means a member of the  
2                   commission;

3                   F. "customer-generator" means a retail customer of  
4                   a public utility or rural electric cooperative who is also the  
5                   operator of a clean generation source;

6                   ~~[D.]~~ G. "municipality" means a municipal  
7                   corporation organized under the laws of the state, and H-class  
8                   counties;

9                   H. "net metering" means measurement of the  
10                  difference between the electricity supplied to a customer-  
11                  generator by a public utility or rural electric cooperative and  
12                  the electricity that is generated by the customer-generator and  
13                  delivered to a public utility or rural electric cooperative at  
14                  the same point of interconnection during a billing period;

15                  I. "net metering revenue reduction" means the  
16                  difference between the rural electric cooperative's applicable  
17                  tariff energy charge and the cooperative's avoided cost as  
18                  filed with the commission, multiplied by the production values  
19                  determined by the commission for a net metering clean energy  
20                  source;

21                  J. "operating margin" means the amounts received or  
22                  receivable from the furnishing of electric service by a rural  
23                  electric cooperative in excess of costs incurred in the  
24                  furnishing of that service;

25                  K. "peak generating capacity" means the total

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1 maximum rated output, in kilowatts, of a clean generation  
2 source;

3 [E-] L. "person" means an individual, firm,  
4 partnership, company, rural electric cooperative organized  
5 under Laws 1937, Chapter 100 or the Rural Electric Cooperative  
6 Act, corporation or lessee, trustee or receiver appointed by  
7 any court. "Person" does not mean a class A county as  
8 described in Section 4-36-10 NMSA 1978 or a class B county as  
9 described in Section 4-36-8 NMSA 1978. "Person" does not mean  
10 a municipality as defined in this section unless the  
11 municipality has elected to come within the terms of the Public  
12 Utility Act as provided in Section 62-6-5 NMSA 1978. In the  
13 absence of voluntary election by a municipality to come within  
14 the provisions of the Public Utility Act, the municipality  
15 shall be expressly excluded from the operation of that act and  
16 from the operation of all its provisions, and no such  
17 municipality shall for any purpose be considered a public  
18 utility;

19 M "rural electric cooperative" means a rural  
20 electric cooperative organized pursuant to the Rural Electric  
21 Cooperative Act;

22 [F-] N. "securities" means stock, stock  
23 certificates, bonds, notes, debentures, mortgages or deeds of  
24 trust or other evidences of indebtedness issued, executed or  
25 assumed by a utility;

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1           ~~[6-]~~ 0. "public utility" or "utility" means every  
2 person not engaged solely in interstate business and, except as  
3 stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,  
4 operate, lease or control:

5                   (1) any plant, property or facility for the  
6 generation, transmission or distribution, sale or furnishing to  
7 or for the public of electricity for light, heat or power or  
8 other uses;

9                   (2) any plant, property or facility for the  
10 manufacture, storage, distribution, sale or furnishing to or  
11 for the public of natural or manufactured gas or mixed or  
12 liquefied petroleum gas for light, heat or power or other uses;  
13 but the term "public utility" or "utility" shall not include  
14 any plant, property or facility used for or in connection with  
15 the business of the manufacture, storage, distribution, sale or  
16 furnishing of liquefied petroleum gas in enclosed containers or  
17 tank truck for use by others than consumers who receive their  
18 supply through any pipeline system operating under municipal  
19 authority or franchise and distributing to the public;

20                   (3) any plant, property or facility for the  
21 supplying, storage, distribution or furnishing to or for the  
22 public of water for manufacturing, municipal, domestic or other  
23 uses; provided, however, nothing contained in this paragraph  
24 shall be construed to apply to irrigation systems, the chief or  
25 principal business of which is to supply water for the purpose

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1 of irrigation;

2 (4) any plant, property or facility for the  
3 production, transmission, conveyance, delivery or furnishing to  
4 or for the public of steam for heat or power or other uses; or

5 (5) any plant, property or facility for the  
6 supplying and furnishing to or for the public of sanitary  
7 sewers for transmission and disposal of sewage produced by  
8 manufacturing, municipal, domestic or other uses; provided that  
9 the terms "public utility" or "utility" as used in the Public  
10 Utility Act do not include any utility owned or operated by a  
11 class A county as described in Section 4-36-10 NMSA 1978 either  
12 directly or through a corporation owned by or under contract  
13 with such a county;

14 [~~H.~~] P. "rate" means every rate, tariff, charge or  
15 other compensation for utility service rendered or to be  
16 rendered by a utility and every rule, regulation, practice,  
17 act, requirement or privilege in any way relating to such rate,  
18 tariff, charge or other compensation and any schedule or tariff  
19 or part of a schedule or tariff thereof;

20 [~~F.~~] Q. "renewable energy" means electrical energy  
21 generated by means of a low- or zero-emission generation  
22 technology that has substantial long-term production potential  
23 and may include, without limitation, solar, wind, hydropower,  
24 geothermal, landfill gas, anaerobically digested waste biomass  
25 or fuel cells that are not fossil fueled. "Renewable energy"

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1 does not include fossil fuel or nuclear energy;

2 [J-] R. "service" or "service regulation" means  
3 every rule, regulation, practice, act or requirement relating  
4 to the service or facility of a utility;

5 [K-] S. "Class I transaction" means the sale, lease  
6 or provision of real property, water rights or other goods or  
7 services by an affiliated interest to a public utility with  
8 which it is affiliated or by a public utility to its affiliated  
9 interest;

10 [L-] T. "Class II transaction" means:

11 (1) the formation after May 19, 1982 of a  
12 corporate subsidiary by a public utility or a public utility  
13 holding company by a public utility or its affiliated interest;

14 (2) the direct acquisition of the voting  
15 securities or other direct ownership interests of a person by a  
16 public utility if such acquisition would make the utility the  
17 owner of ten percent or more of the voting securities or other  
18 direct ownership interests of that person;

19 (3) the agreement by a public utility to  
20 purchase securities or other ownership interest of a person  
21 other than a nonprofit corporation, contribute additional  
22 equity to, acquire additional equity interest in or pay or  
23 guarantee any bonds, notes, debentures, deeds of trust or other  
24 evidence of indebtedness of any such person; provided, however,  
25 that a public utility may honor all agreements entered into by

. 155184. 3

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1 such utility prior to ~~May~~ 19, 1982; or

2 (4) the divestiture by a public utility of any  
3 affiliated interest that is a corporate subsidiary of the  
4 public utility;

5 [~~M-~~] U. "corporate subsidiary" means any person ten  
6 percent or more of whose voting securities or other ownership  
7 interests are directly owned by a public utility; and

8 [~~N-~~] V. "public utility holding company" means an  
9 affiliated interest that controls a public utility through the  
10 direct or indirect ownership of voting securities of that  
11 public utility."

12 Section 2. A new section of the Public Utility Act is  
13 enacted to read:

14 "[NEW MATERIAL] NET METERING SERVICE. --

15 A. If a public utility or a rural electric  
16 cooperative makes net metering services available to a  
17 customer-generator with a clean generation source that the  
18 public utility or rural electric cooperative serves, the  
19 customer-generator shall pay all costs for the acquisition and  
20 installation of the necessary metering equipment and customer-  
21 owned facilities required by the public utility or rural  
22 electric cooperative for interconnection. The customer-  
23 generator shall also pay all costs incurred by the public  
24 utility or rural electric cooperative for net metering,  
25 including costs for equipment or services that are necessary to

. 155184. 3

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1 meet safety and performance standards pursuant to the Public  
2 Utility Act.

3 B. The public utility or a rural electric  
4 cooperative may charge the customer-generator for the  
5 installation of any metering equipment required for net  
6 metering that is in addition to the equipment required for the  
7 rate tariff under which the customer is normally served. A  
8 public utility or a rural electric cooperative may install  
9 additional equipment that it deems necessary to meter the total  
10 electricity flow in each direction. If the clean generation  
11 source of the customer-generator has a peak generating capacity  
12 of ten kilowatts or less, a party requesting the additional  
13 equipment shall pay the cost of additional equipment. If the  
14 clean generation source of the customer-generator has a peak  
15 generating capacity exceeding ten kilowatts, the public utility  
16 or rural electric cooperative may require the customer-  
17 generator to pay the cost of the additional equipment.

18 C. Costs imposed by a public utility or a rural  
19 electric cooperative on a customer-generator shall not exceed  
20 those necessary to meet safety and interconnection requirements  
21 pursuant to the Public Utility Act.

22 D. A customer-generator is responsible for costs  
23 associated with operating and maintaining a clean generation  
24 source of the customer-generator and for costs related to  
25 modification of the clean generation source required for the

. 155184. 3

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1 purposes of interconnectivity, safety and reliability.

2 E. A public utility or a rural electric cooperative  
3 shall make net metering available to a customer-generator with  
4 a clean generation source with peak generating capacity of ten  
5 kilowatts or less that meets the safety and interconnection  
6 requirements pursuant to the Public Utility Act.

7 F. A public utility that is not a rural electric  
8 cooperative shall make net metering available to a customer-  
9 generator with a clean generation source that meets the safety  
10 and interconnection requirements pursuant to the Public Utility  
11 Act and that has a peak generating capacity exceeding ten  
12 kilowatts, but not exceeding one hundred kilowatts; provided  
13 that making net metering available to that customer-generator  
14 does not increase the cumulative peak generating capacity of  
15 all clean generation sources on the public utility's  
16 distribution system above one percent of the average of that  
17 public utility's peak retail demand over the past three  
18 calendar years.

19 G. A rural electric cooperative shall make net  
20 metering available to a customer-generator with a clean  
21 generation source that meets the safety and interconnection  
22 requirements pursuant to the Public Utility Act and that has a  
23 peak generating capacity exceeding ten kilowatts, but not  
24 exceeding one hundred kilowatts; provided that making net  
25 metering available to that customer-generator does not increase

. 155184. 3

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1 the net metering revenue reduction above one percent of the  
2 rural electric cooperative's average operating margins.

3 H. A public utility or rural electric cooperative  
4 may, with the commission's approval, allow additional net  
5 metering of customer-generators beyond the limits imposed by  
6 Subsections F and G of this section.

7 I. Once interconnected, net metering shall not be  
8 withdrawn from a customer-generator on the basis of the  
9 limitations specified in Subsections E and F of this section.

10 J. The commission shall adopt rules for this 2005  
11 act that shall become effective on June 1, 2006, including  
12 uniform interconnection and safety standards consistent with  
13 the requirements of Subsection C of this section and the safety  
14 and performance standards of the Public Utility Act that  
15 include application procedures, reporting requirements for peak  
16 loads and operating margins and provisions ensuring compliance  
17 and timely response by public utilities and rural electric  
18 cooperatives, including reporting of disapproved applications,  
19 to customer requests for interconnection."

20 Section 3. A new section of the Public Utility Act is  
21 enacted to read:

22 "[NEW MATERIAL] RATES AND CHARGES--CREDITS.--

23 A. A rate of charge for retail electric service by  
24 a public utility or rural electric cooperative to a  
25 customer-generator shall be based on the rate or charge of the

. 155184. 3

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1 public utility or rural electric cooperative that is applicable  
2 to the customer-generator's customer class.

3 B. A public utility or rural electric cooperative  
4 shall provide a net metering credit to a customer-generator  
5 equal to the applicable tariff of the public utility or rural  
6 electric cooperative for the customer-generator's customer  
7 class with respect to the customer-generator's production of  
8 electricity.

9 C. If a customer-generator's net aggregate bill  
10 from the public utility or rural electric cooperative is less  
11 than zero, a credit shall be carried over to future bills of  
12 that customer-generator until the credit balance equals zero.

13 D. A customer-generator shall not claim a net  
14 metering credit pursuant to this section from a public utility  
15 or rural electric cooperative with respect to a clean  
16 generation source pursuant to the Public Utility Act if the  
17 customer-generator has claimed a net metering credit from  
18 another public utility or rural electric cooperative for the  
19 same clean generation source."

20 Section 4. A new section of the Public Utility Act is  
21 enacted to read:

22 "[NEW MATERIAL] SAFETY AND PERFORMANCE REQUIREMENTS. --

23 A. A net metering system used by a customer-  
24 generator shall comply with all relevant public utility or  
25 rural electric cooperative interconnection requirements and all

. 155184. 3

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1 federal, state and local safety and performance standards and  
2 codes.

3 B. Interconnection requirements for clean  
4 generation sources approved by the commission shall comply with  
5 the standards of the institute of electrical and electronics  
6 engineers for interconnecting distributed resources with  
7 electric power systems.

8 C. A public utility or rural electric cooperative  
9 may require a customer-generator, at that customer-generator's  
10 expense, to provide lockable switching equipment capable of  
11 isolating a clean generation source from the public utility's  
12 or rural electric cooperative's system.

13 D. The public utility or rural electric cooperative  
14 shall not be liable directly or indirectly for permitting or  
15 continuing to allow an attachment of a clean generation source  
16 or for an act or omission of a customer-generator that causes  
17 loss or injury to a person or property, including death of a  
18 customer-generator or a third party. A customer-generator  
19 shall indemnify a public utility or rural electric cooperative  
20 for damage to a person or property and for any damage or loss  
21 incurred by a third party or an heir or successor of that party  
22 as the result of the installation or operation of a clean  
23 generation source.

24 E. A customer-generator shall notify its public  
25 utility or rural electric cooperative and the commission of the

. 155184. 3

1 intent to install a clean generation source at least sixty days  
2 before its installation on an application form prescribed by  
3 the commission. The public utility or rural electric  
4 cooperative shall approve or disapprove the application and  
5 notify the customer-generator of its approval or disapproval  
6 within thirty days of the public utility's or rural electric  
7 cooperative's receipt of the application. The public utility  
8 or rural electric cooperative shall notify the commission of  
9 its approval or disapproval in accordance with the commission's  
10 rules. "

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